

8 November, 1945.

C in C.Sentence.

Kapitanleutnant HEINZ ECK	Death.
Leutnant zur See AUGUST HOFFMANN	Death.
Marine Stabsarzt WALTER WEISSPFENNIG	Death.
Kapitanleutnant (Ing) HANS RICHARD LENZ	Imprisonment - life.
Gefreiter SCHWENDER.	Imprisonment - 15 years

The proceedings of the Military Court held for the trial of members of the crew of the German U boat 852, charged with the war crime of being concerned in the killing of members of the crew of the S.S. Peleus, when the latter had been torpedoed, by firing and throwing grenades at them, are submitted for confirmation.

This is the first conviction under the Royal Warrant for the trial of war crimes in this theatre.

On the 13th March 1944 the Peleus, a Greek vessel under charter to the British Government with a crew of thirty five, was sunk by torpedoes fired from a German submarine in the South Atlantic. There were a number of survivors from the explosion who clung to pieces of wreckage and to the rafts provided for such an emergency. ~~and~~ Three of the crew ultimately survived, one being the Chief Officer Liossis, and were picked up on one of the rafts on the 20th April, still in the South Atlantic, by a Portuguese vessel. Sworn statements were taken from these survivors, all of them Levantines, and these statements were put in evidence at the trial under the rules embodied in the Royal Warrant, the sailors themselves being now beyond trace. Although they were able to give a graphic story of the crime, they could not identify the submarine, and it was only when some months later U.852 fell into Allied hands with its log book still intact that its identity was established.

The crew of this submarine were then interrogated, and some of them were called in person to give evidence for the prosecution at the trial. Pieced together their story with that of the survivors presented a vivid and dramatic picture the main features of which are hardly in dispute.

Having fired its torpedoes U.852 surfaced, and at that time some of the survivors of the Peleus were already on rafts which bore lights and were communicating to each other by whistles. The submarine hailed one of these rafts, and an officer of the Peleus was taken on board, questioned by Lenz, Chief Engineer, who spoke English, as to the identity of the Peleus, sent back to his raft and told that he would no doubt be picked up later on. After that orders were shouted for the lights to be extinguished, and on the orders of the submarine commander fire was opened from the submarine with machine guns on the rafts and wreckage, and grenades were thrown at close quarters. At one time the fire was assisted by the beam of the submarine's signalling lamp.

The members of the submarine's crew on trial were: The Commander, Eck; the third in command, Hoffmann; the Chief Engineer, Lenz; the ship's surgeon, Weisspfennig; and a young leading seaman, Schwender.

It was the Commander, Eck, who gave the order for the arms to be brought up on deck and for the shooting to take place. In response to a protest from Lenz he said that it was necessary to eliminate all trace of the sunken ship that might attract notice from the air, and so assist in the location of the submarine.

Hoffmann and Weisspfennig carried out the Commander's order, each of them actually firing a machine gun or throwing grenades. Schwender, who only came up on deck later, fired a machine gun for a short time at a target given him, when the gun was taken from his hands by Lenz, who fired several bursts from it himself. Lenz in his evidence reconciled this action with his

previous protest by saying that he suspected that the target might be the officer of the Peleus with whom he had spoken, and that he did not consider it fitting that a brave man should receive his death-wound from so unworthy a person as Schwender, whom he regarded as of low character. Of the genuineness of this explanation there appears no doubt. The firing continued intermittently from the time of sinking (late dusk) until after midnight, when the submarine withdrew.

One of the Peleus survivors received wounds and two others of the crew who reached their raft died of wounds inflicted after the torpedoing.

All the accused having made statements on interrogation gave evidence on oath at the trial. They were defended by German counsel, one of whom, Dr. Todsén, defending Eck, displayed considerable ability. Lenz was defended by a British officer, a barrister, Major Leron, who carried out a no doubt distasteful duty with competence and was of assistance to the court. A Professor of Law, Dr. Wegner, also addressed the court on behalf of the defendants generally. The proceedings were conducted with admirable dignity and despatch, the German counsel responding correctly to the court's attitude of courtesy combined with firmness.

The offence charged, the deliberate killing of shipwrecked sailors, themselves not even combatant, after their ship is torpedoed, is a breach of the customary laws of war not of any Article of a specific Convention. It was the subject of one of the Leipzig trials after the last war, when a German court convicted German sailors who shot the survivors of the torpedoed hospital ship, Llandovery Castle, in their lifeboats.

The defence put forward with great force and a wealth of circumstance and argument by and on behalf of Eck, the Commander of U.852, was that his action was dictated by military necessity; or that even if that plea could not be upheld on the most rigid grounds, consideration must be given to the plight of himself and his crew which was then indeed desperate. They had left port two months before with the knowledge that the three submarines of the same class which had preceded them for duty in the same theatre, the South Atlantic, had been eliminated. His object and indeed his orders were to disintegrate the larger rafts whose survival would betray the nearness of his submarine; and that could only be effected by piercing the hollow supports with machine gun fire. He was not conscious that there were in fact survivors. He could not however deny, in view of Lenz's protest, that he knew well that the effect of his order might be to eliminate survivors.

An attempt was made to distinguish the circumstances from those of the Llandovery Castle, by showing that whereas the object in the latter case was the concealment of a crime (the sinking of a hospital ship), the object in this case was not criminal, but a furtherance of a supreme military duty which permitted of no alternative.

The court rightly, in my opinion, rejected this contention. The Hague Convention itself repudiates ~~any~~ theory that the laws of war can be set aside at will because of the exigencies of the moment. An experienced U.boat commander called for the defence, in answer to the question by the Judge Advocate "What would you have done if you had been in Eck's position?" answered "I would under all circumstances have tried my best to save lives, as that is a measure which was taken by all U boat commanders; but when I hear of this case then I can only explain it as this, that Captain Eck through the terrific experience he had been through lost his nerve." "Does that mean", continued the Judge Advocate, "That you would not have done what Captain Eck did if you had kept your nerve?" Answer, "I would not have done it." (Third day page 9). This was Eck's first voyage in command and the first "kill" of that voyage. Stress was laid upon the emotional effect of the circumstances, and in fairness to the accused generally, I may add that I am informed that the crime was not repeated on subsequent sinkings by U.852.

The defence in the case of Hoffmann and Weisspfennig was that they were bound on pain of summary execution to obey the orders of their commander, that they had complete confidence in him, and were not in a position to judge its legality or illegality. The justification of a violation of one of the rules of warfare by proof of superior orders is discussed and rejected in MML Chapter XIV para 443 and note 4. The statement in that authority concludes by emphasising the major principle that members of the armed forces are bound to obey lawful orders only, and that they cannot escape liability if in obedience to a command they commit acts which both violate unchallenged rules of warfare and outrage the general sentiment of humanity.

Weisspfennig, as an officer of the medical service, was forbidden by the Geneva Convention to use arms otherwise than in defence. Schwender, who was not present on deck in the early stages of the firing, maintained that he merely obeyed an order to fire at a particular target, a piece of wreckage, and was not aware that there might be a survivor clinging to it. This is not consistent with the reason given by Lenz for taking the gun from him.

As indicated above the strongest argument for Lenz was the fact that he protested at the outset against the proceeding, and avoided taking an active part until he went on deck and took the gun from Schwender. He justified that action as being dictated by a sense of chivalry and the duty of implicit obedience to any order of his Commander.

On the defence of justification generally and ignorance of the illegality of the order it may be noted that the Commander found it necessary, owing to the attitude of the crew, to address them through the ship's loudspeaker and to refer to the bombing by the Allies of innocent people in Germany and to declare that it was with a heavy heart that he had finally made the decision. (Second day pages 12 and 15; third day page 4).

The Court, composed as it was of two British and two Greek Naval Officers with three British Army Officers all of senior rank and a wide range of service experience, was well qualified to deal with the military issues, and was correctly advised by the Judge Advocate, Melford Stevenson, K.C. on such of the legal questions raised as were relevant.

In my opinion the findings may properly be confirmed. The sentences were within the powers of the court who, in the case of two of the accused, gave effect to mitigating circumstances of a kind specified in the authorities as deserving of consideration.

PETITIONS:

Petitions have been lodged on behalf of each of the accused. Briefly summarised they are as follows:-

- (1) On behalf of Eck by Dr. Tolsen contends that the order he gave was only to sink the wreckage, though he admits there was no possibility of survival when this was effectively done. The situation in the South Atlantic was especially dangerous. Any trace of submarine work would draw the whole strength of Allied air power.
- (2) On behalf of Hoffman by Dr. Wolf: He was only twenty-one at the time, with three and a half years service; had no instruction in International Law and only loyally obeyed his Commander. He was not inhumane and had saved the lives of comrades at the risk of his own on other occasions.
- (3) On behalf of Lenz by Major Leron contends that he fired on the order of his Commander only, and that it was not proved that he fired at anything but wreckage; urges that his objection to the order given and his chivalrous motives should receive greater consideration.

- (4) On behalf of Dr. Weisspfennig by Dr. Pabst: He obeyed an order; he fired not for any offensive purpose but only to assist in demolishing wreckage. It was his first U.boat patrol. Pleas for pardon by his wife and his father and mother are submitted, with certificates of his good character.
- (5) On behalf of Schwender by Dr. Pabst repeats that he obeyed orders and knew nothing of survivors. The order as he received it was, on the face of it, legal. He was only a subordinate of nineteen years.

There are two petitions on behalf of all the defendants, one by the Admiral Commanding the German Minesweepers submitting that Eck was guilty only of a blunder in judging the situation, and pointing out that many other actions in war have killed defenceless people and are accepted as inevitable. The other by a former German Naval Officer Hans Lauenstein, draws attention to the strain of U.boat life in the Tropics, and begs for mercy on men who regret the action they took under conditions of stress which no one can measure who has not experienced them.

H. Schönbauer

Brigadier,
D.J.A.G.

HS-B/JJP.